

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Weatherley 39th Street, LLC,

Plaintiff,

– against –

Macy’s Retail Holdings, Inc.,

Defendant.

Docket No.

COMPLAINT

Trial by Jury Demanded

Plaintiff, for its complaint, alleges:

PARTIES

1. Plaintiff, Weatherley 39th Street, LLC (“Weatherley”), is a limited liability company, organized under the laws of the State of Connecticut and authorized to do business in the State of New York.

2. Upon information and belief, Defendant, Macy’s Retail Holdings, Inc. (“Macy’s”), is a corporation organized and existing under the laws of the State of Delaware, is authorized to do business in the State of New York and is the successor by merger to Macy’s Retail Holdings, Inc., a New York corporation.

SUBJECT MATTER JURISDICTION

3. This action is of a civil nature and the amount in controversy, without interest and costs, exceeds the sum or value specified by [28 U.S.C.A. § 1332](#).

4. Upon information and belief, every issue of law and fact raised or to be raised in this action is wholly between citizens of different states.

5. Plaintiff and Defendant ,Macy’s Retail Holdings, Inc. are citizens of different states by virtue of the fact that, upon information and belief, Defendant, Macy’s Retail Holdings, Inc., is a citizen of the States of Delaware, its state of incorporation and Ohio where it maintains its principal place of business, and none of the members of Plaintiff is a citizen of the States of Delaware or Ohio.

VENUE

6. Venue is laid in the Southern District of New York pursuant to 28 U.S.C. § 1391(2) because a substantial part of the events or omissions giving rise to Weatherley’s claim occurred there and a substantial part of the property that is the subject of the action is situated there.

BASIC FACTUAL ALLEGATIONS

7. The Weatherley family has owned 16-18 West 39th Street (the “Premises”) in mid-town Manhattan since the day it opened in 1916. The Weatherley family has owned the land underneath the building even longer, since the 1890s.

8. Since, in or about 1939, up until very recently, the Premises was leased to the owner of the Lord & Taylor department store chain.

9. Until very recently, Weatherley’s building was interconnected to Lord & Taylor’s flagship Fifth Avenue store. Indeed, Weatherley’s building often was called the Annex.

10. The interconnections were removed at about the same time as Lord & Taylor closed down its Fifth Avenue store at the end of 2018, sold the main department store building to an entity controlled by WeWork for about one *billion* dollars on February 28, 2019, and, thereafter, no longer had any use for the Annex.

11. Macy's, a subsidiary of Macy's, Inc., is a defendant because, upon information and belief, it became Weatherley's tenant pursuant to the most recent lease for the Annex dated April 1, 1986 (the "Annex Lease").

12. Upon information and belief, Macy's took over the Annex Lease from May Department Store Company ("May") when Macy's parent merged with May, who, in turn, had acquired the Annex Lease from Associated Dry Goods Corporation ("Associated"). May had merged with Associated, Lord & Taylor's owner when the Annex Lease was signed.

13. Upon information and belief, a sublease was made between Macy's and an entity owned by the parent of the Lord & Taylor department store chain.

14. Macy's tendered payments to Weatherley for the rent due pursuant to the Annex Lease.

15. Upon information and belief, Macy's was reimbursed by a company affiliated with Lord & Taylor for the rent Macy's paid to Weatherley.

16. Upon information and belief, real estate taxes were paid by a company affiliated with Lord & Taylor on behalf of Macy's.

17. Beginning in April 2020 and continuing through the present, Macy's has stopped paying the rent to Weatherley.

18. Macy's now is indebted to Weatherley for \$ 140,000.00, representing unpaid rent for April 2020, May 2020, June 2020 and July 2020.

19. Additionally, Macy's will be required to pay the attorneys' fees Weatherley incurs in prosecuting this action, pursuant to Section 21.02 of the Annex Lease and interest.

Wherefore, Weatherley demands judgment against Macy's for \$ 140,000.00, attorneys' fees in an amount to be determined by the Court and interest commencing April 1, 2020.

Dated: New York, New York
July 8, 2020

Respectfully submitted,

Wilk Auslander LLP

/s/ M. William Scherer

By:

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